

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

LP MATTHEWS, L.L.C.	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 04-1507-SLR
v.	)	
	)	
BATH & BODY WORKS, INC.; LIMITED	)	
BRANDS, INC.; Kao BRANDS CO.	)	
(f/k/a THE ANDREW JERGENS	)	
COMPANY); and Kao CORPORATION	)	
	)	
Defendants.	)	

**LP MATTHEWS' CROSS-MOTION FOR SUMMARY JUDGMENT OF  
INFRINGEMENT AGAINST THE KAO DEFENDANTS**

Pursuant to Federal Rule of Civil Procedure 56 and the Local Rules of this Court, Plaintiff LP Matthews, L.L.C. cross-moves for summary judgment that defendants Kao Brands Co. (f/k/a The Andrew Jergens Company) and Kao Corporation (collectively “the Kao defendants”) infringe LP Matthews’ U.S. Patent No. 5,063,062 (“the ‘062 patent”). Kao originally filed a motion for summary judgment of non-infringement on March 8, 2005, before this Court’s scheduling order issued and before defendants Kao Corporation, Limited Brands, Inc. and Bath & Body Works, Inc. answered the Amended Complaint.

No dispute of material fact exists that Kao’s accused product, Curél Ultra Healing Daily Moisture Therapy, contains 0.03% orange oil, a pharmaceutically-acceptable moisturizer, and oatmeal extract (an oat grain derivative). Claims 6 and 9 of the ‘062 patent call for a composition that cleans human skin and contains orange oil, a pharmaceutically-acceptable moisturizer, and an oat ingredient. Only the cleaning composition and orange oil claim elements are at issue with respect to the Kao accused products. The Court interprets the asserted claims of

the '062 patent as a matter of law. *See Markman v. Westview Instr., Inc.*, 517 U.S. 370, 372 (1996). That interpretation is dispositive to the case against the Kao defendants, because no issue of fact exists as to the composition of their accused products.

ASHBY & GEDDES

/s/ *John G. Day*

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Dated: July 6, 2006  
171020.1

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of July, 2006, the attached **LP MATTHEWS' CROSS-MOTION FOR SUMMARY JUDGMENT OF INFRINGEMENT AGAINST THE KAO DEFENDANTS** was served upon the below-named counsel of record at the address and in the manner indicated:

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